Supreme Court of the United States,

OCTOBER TERM, 1901.

No. 585.

THE BOARD OF COMMISSIONERS OF STANLY COUNTY and I. W. SNUGGS, County Treasurer of Stanly County,

Petitioners,

vs.

W. N. COLER & COMPANY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI.

Brief for Respondents.

CHARLES PRICE,
Of Counsel for Respondents.

In answer to the petition and brief for petitioners, we submit the following:

It is insisted by the petitioners that this Court should grant its writ of *certiorari* to the Circuit Court of Appeals, in this suit, because of a conflict between the decisions of the Supreme Court of North Carolina and the Circuit Court of Appeals.

We will observe, in reference to this contention, one of the peculiarities of this litigation has been, from the

beginning, that this suit has been treated by the County as if it was one prosecuted against the corporate authorities, to prevent the issue and sale of bonds by a county proposing to issue and sell the same without the power to do so.

The action prosecuted in the State Court, by the County of Stanly, was one, by the "Board of Commissioners of Stanly County and James P. Nash and G. R. McCain, citizens, against I. W. Snuggs." It was begun to prevent him from paying over to the owners of the bonds the interest due them, in performance of his trust. In the complaint and answer, to be found on pages 16 and 22 of the printed record, it will be seen that no mention is made of the sections of the Code of North Carolina, 1996, 1997, etc., recited in the bond. But, that the only ground *alleged* for holding that the bonds were void, was the fact, that, in the enactment of Chapter 183, of the Acts of 1887, providing for subscriptions by counties, etc., and Chapter 236 of the Acts of 1870, the ayes and nays were not entered on the journals of the respective branches of the Legislature, as required by the Constitution of the State.

It is plain to be seen that this proceeding in the State Court was a collusive one. No bondholder was a party, and nowhere in the pleadings, in said action in the State Court, is there any copy of the bond, or any copy of the recitals it contains (see Judge SIMONTON's Opinion, on Circuit, page 45, Printed Record). Says Judge SIMONTON, speaking of the action in the State Court: "The parties, plaintiff and defendant, to this suit were practically one."

On page 54 of the printed record is to be found the petition on appeal in this suit, signed by the defendant

I. W. Snuggs, the same, who was defendant in the action in the State Court. In this petition this defendant sets forth the fact, that he "is aggrieved by the decree of the Circuit Court" of the United States, and he has prosecuted the appeal ever since, and is now prosecuting this petition for a writ of *certiorari*.

In the *opinion* of the Supreme Court of North Carolina, on page 32 of the record, is to be found a discussion by the Justice who delivered the opinion of the Court of the Sections 1996, 1997, etc., of the Code. In this opinion the decision is put on the ground that the railroad was not an "unfinished road," and it did not appear that the citizens of the county had an interest in it. In this reference to the Code sections the Judge says: "But the defendant, for his protection, presents the view" that, under "Sections 1996, 1997, etc., of the Code," the commissioners had the power to issue the bonds.

These corporate authorities, before ordering the election in the County of Stanly, had passed upon these very questions—*the existence of the road* and the *the interest of the citizens of the county in the same.*

On page 19 of the record, in the "Exhibit June Term, 1889," is the following: "It appearing that the citizens of said county have an interest in said railroad." Then, first, here was a railroad to be completed, and, second, here was the fact that the citizens of the county have an interest in the railroad. These facts were found and put on the record by the very people, *corporate authorities*, who are now, after having secured the railroad, trying to repudiate this debt.

Having entered *these facts of record*, before ordering the election, before issuing the bonds, they came

into court, in answer to a suit of the innocent bondholder, and say the bond is void, because there was not a *road to be finished*—to be completed—and it was not so—not true—that the citizens of the county *have an interest in the railroad.* Note, these were the *same parties who were plaintiffs in the action in the State court,* the same *persons,* and the *citizen,* Nash, joined as plaintiff, in the State Court, was the Chairman of the Board of Commissioners. Although they, the said plaintiffs in the action in the State court, had, *before ordering the election,* acting under these sections of the Code, *found and entered of record,* in the order (Exhibit), on pages 19 and 20, of the record, the following: "And, it appearing that the citizens of said county have an interest in said railroad," etc., they contend here, in this suit, brought by innocent bondholders, that it was not true the citizens of the county had an interest in the railroad, or might have such interest. Suppose it had been required of an innocent bondholder, for value, to have made inquiry as to whether the corporate authorities had exercised the power conferred on them by Section 1996 of the Code in the manner and upon the conditions therein provided, and, in the prosecution of that inquiry, they had examined the record of the proceedings of the board, as printed on pages 19 and 20 of the record, is it possible that the Court, after the purchase of the bonds, as these bonds were purchased, would permit these *same corporate authorities* to say, in defense of the bondholders' suit, that what they had entered on the record was not true?

If a bondholder had been a party to the suit in the State Court, and the recitals in the bonds had been called to the attention of the Court, together with the

fact that the corporate authorities had passed upon the conditions of Section 1996 of the Code—to wit, the completion of the railroad—and the interest of the citizens in the same, both being entered of record in the first instance; and further, if the case of *Belo vs. Commissioners of Forsyth County* had been called to the attention of the Court, the decision would have been, we must think, in favor of the validity of the bonds.

In the light of these facts, how can the human mind escape the impression that this action in the State Court was a collusive one? In view of all this, we submit that there is no conflict between the decision of the Supreme Court of North Carolina and that of the Circuit Court of Appeals.

It is not to be supposed that the Court would have overruled the leading case in North Carolina, on the subject of municipal bonds (*Belo vs. Comms.*, 76 N. C. Reps., 487-490), if it had been called to its attention; and, if these entries upon the record of the board, together with a copy of the bond showing the recitals, had been also called to its attention.

In the above we have shown that there is no conflict between the decision of the Circuit Court of Appeals and that of the Supreme Court of the State. It is to be observed if there was, it being in regard to the construction of a valid statute, authorizing the issue of negotiable paper, it is not such a conflict as is contemplated in the case of *Forsythe vs. Hammond*, 166 U. S., 506. The construction of this *valid statute* by the Supreme Court of North Carolina, in a suit where the parties, plaintiff and defendant, as said by Judge SIMONTON, were "practically one," declaring void bonds issued in good faith, in due course of

trade, and purchased in good faith in open market, for value, where no bondholder was before the Court, years after the issue and sale of the bonds, and after the interest had been paid regularly for five years, is not such as the Courts of the United States will follow, especially when that construction is to overrule the leading case in North Carolina on municipal bonds, *Belo vs. Comms.*, 489-493, N. C. Reps.

In the history of these conflicts of opinion and judgment, as said by defendants' solicitors in their brief, there is also to be noted the fact that, in the first place, this suit was argued before Judge SIMONTON on the circuit, who, in an unanswerable argument, upheld the bonds, finding ample power under Section 1996, etc., of the Code, for their issue *(see Record, page 42)*. Upon appeal from the decree of this Judge, the same was reversed ; but, upon a rehearing and a reargument, the Circuit Court of Appeals receded from its former decision and affirmed the decree of Judge SIMONTON, Judge GOFF dissenting. Judge MORRIS, who sat in the first argument and hearing in the Circuit Court of Appeals, wrote the leading opinion of the Court upon the rehearing, and we call attention to his opinion on page 83 of the printed record.

The ground upon which the first decision was based was that the Court was bound to follow the decision of the State Court, as the Court had only construed its own State's statutes. When the last argument was made before the Court, it being upon the rehearing, the Supreme Court of the United States had decided the questions propounded in the *Wilkes bond case, 180 U. S., 506*, in many respects similar to these presented by this record ; and, indeed, it was largely upon the principles laid down in the decision in that case, Justice

HARLAN delivering the opinion, that the *final decision* of the Circuit Court of Appeals is based.

One thing we observe, in the opinion of Justice HARLAN, in the *Wilkes case*, is, that in so far as it goes, it affirms the decision, the principles, of the Stanly case, the one now under consideration, as rendered and laid down by Judge SIMONTON, on the Circuit, printed in this record. It was decided by Judge SIMONTON, in this case, that the decision of the State Court upon the question of whether the requirements of the Constitution were complied with in the passage of a statute will control in the Federal tribunals. In this Justice HARLAN sustains the decision.

It was decided by Judge SIMONTON, in the same case, that the Federal Courts are not controlled by the construction put upon a *valid statute*, which construction declares void bonds issued under such statute years *before that construction was put upon the same.* In this he was supported by Justice HARLAN'S decision in the *Wilkes* case.

It was decided by Judge SIMONTON in the *Stanly case* that the rights of the parties in the case were determinable by the law of the State as it was in the State at the time the bonds here involved were made and put upon the market by the county.

In this he was expressly sustained by Justice HARLAN in the opinion in the Wilkes case *(Wilkes County vs. Coler*, 180 U. S., 506*)*.

The first decision of the Circuit Court of Appeals in this case, Judge GOFF delivering the opinion upon the principal questions discussed, affirms Judge SIMONTON, and he is reversed only upon his construction of the sections of the Code—a valid statute—in the following

words, as they are contained in Judge GOFF's opinion, to wit:

"But it also held that under sections 1996-2000 of the Code of North Carolina, the county commissioners had the power to subscribe for and issue the bonds, notwithstanding the fact that the proposed railroad had not then been begun, and though the citizens of the county had not any direct interest in it. This ruling of the court below is opposed to the construction put upon those sections of the North Carolina Code by the supreme court of that State, and, considering the facts connected with this controversy, we take the construction of that court as the ruling to be followed by us at this time."

Here was a clear misconception of the rule which obtains in the Federal Courts, as laid down by Justice HARLAN, and in many cases decided by the Supreme Court.

In view of this, as said by Judge MORRIS, in his opinion (the other questions presented by the record being principally argued at the first hearing), upon the rehearing, and after Justice HARLAN, in the *Wilkes decision*, had distinctly called attention to the rule, that in the construction of a *valid* statute of a State by the highest Court, the Courts of the United States are not bound, the Court receded from the former decision.

So that, in fine, Judge GOFF's decision in the respect in which it overrules Judge SIMONTON'S, is, itself, overruled by the Supreme Court of the United States, in the Wilkes County decision, *supra*. It is to be noted, that, in certifying the questions in the Wilkes case to the Supreme Court, the petition to rehear, was ordered to await the decision of that Court, upon the questions certified (see Record, page 80).

In the next place we observe, in the brief filed by petitioners, that the counsel have not been able to find elsewhere than in the brief of Mr. PRICE and Judge

BOYD's opinion, the rule that the Court will uphold bonds issued as these bonds were, if, under any circumstances, it can do so.

This is why we commend the greatest opinion ever delivered by the Supreme Court of North Carolina, on the subject of municipal bonds, to the counsel. (*Belo vs. Comms. of Forsyth County*, 76 N. C. R.).

In that opinion is the following:

"While the decisions are very uniform that the record of the justice's court, affirming the fact of compliance with the conditions precedent to the subscription of stock is conclusive, and estops the county from denying the validity of the bonds in the hands of a *bona fide* holder before maturity, they are equally uniform in giving the same effect to the recitals in the bonds themselves, that they had been issued in pursuance of the law which authorized their issue. The recital is a determination of the question, and the holder has a right to rely on it. *Town of Coloma vs. Evans*, 92 U. S., 484. *Knox County vs. Aspinwall*, 21 Howard, 539. Mr. Justice GRAY says: 'In the leading case of Knox vs. Aspinwall, the decision was rested upon two grounds. One of them was that the mere issue of the bonds containing a recital that they were issued in pursuance, of the legislative act, was a sufficient basis for the assumption by the purchaser, that the conditions on which the county was authorized to issue them had been complied with, and it was said the purchaser was not bound to look further for evidence of such compliance, though the recital did not affirm it. This position was supported by reference to the Royal British Bank vs. Turquand, 6 Ellis and Blackburn, in a case in the exchequer chamber, which fully sustains it."

The foregoing are the words of Justice BYNUM, in a decision which has never been departed from. Here the supreme court, *in 1877*, approved of the doctrine in the Royal British Bank case, upon which Knox vs. Aspinwall was based.

So *our own Court, in a municipal bond case*, approves of what is said in the case of the *Royal British Bank vs. Turquand.*

In *Louisville, &c., Ry. Co. vs. Louisville Trust Company*, 174 U. S., on pages 573 and 574, Justice GRAY says:

"In *Merchants' Bank vs. State Bank*, 10 Wall., 604, this court stated as an axiomatic principle in the law of corporations this proposition: 'Where a party deals with a corporation in good faith, the transaction is not *ultra vires*, and he is unaware of any defect of authority or other irregularity on the part of those acting for the corporation, and there is nothing to excite suspicion of such defect or irregularity, the corporation is bound by the contract, although such defect or irregularity in fact exists. If the contract can be valid under any circumstances, an innocent party in such case has a right to presume their existence, and the corporation is estopped to deny them.' 10 Wall., 644, 645. The proposition was supported by citations of many English and American cases, and among them *Royal British Bank vs. Turquand* (1856), 6 El. & Bl. 327. And the justices of this court, while differing among themselves in the application of the principle to municipal bonds, have always treated *Royal British Bank vs. Turquand* as well decided upon its facts. *Knox County vs. Aspinwall*, 21 Howard, 539, 545; *Moran vs. Miami County*, 2 Black, 722, 724; *Gelpecke vs. Dubuque*, 1 Wall., 175, 203; *St. Joseph vs. Rodgers*, 11 Wall., 644, 666; *Humboldt vs. Long*, 92 U. S., 642, 650. And see *Zabriskie vs. Cleveland, Columbus and Cincinnati Railroad*, 23 Howard, 381, above cited."

The cases cited by Justice GRAY in the above paragraph are decided upon *municipal bonds*, and show that the principle he states applies to contracts with municipal as well as with other corporations; and the late Justice MILLER, in his dissenting opinion in the case of *Humboldt Township vs. Long*, 92 U. S.,

pages 650 and 651, says, the case of *Knox County vs. Aspinwall*, 21 Howard, 539, the original case, on which the rule and principles are based, is itself based upon *The Royal British Bank vs. Turquand.*

Every case cited by Justice GRAY is a case upon municipal bonds. We respectfully commend to our brethren the careful perusal of these cases, and especially the dissenting opinion of Justice MILLER in the case of *Humboldt Township vs. Long*, 92 U. S., 650, 651.

Again, we find in looking over the brief of the learned counsel, in support of their petition for *certiorari*, that it is devoted to a discussion of the meaning of the words, "Any railroad, in which the citizens of a county may have an interest," and also the meaning of the word "completion," as written in Section 1996 of the Code.

We call the attention of this Court to the discussion of this section of the Code by Judges SIMONTON, MORRIS and BOYD, in their respective opinions, all printed in the record in full.

It is not denied that Sections 1996, 1997, 1998, etc., of the Code of North Carolina, are as much a part of the statute law of North Carolina, as any other part of the Code is.

Section 1996 of the Code is as follows:

"1996. The boards of commissioners of the several counties shall have power to subscribe stock to any railroad company or companies, when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest."

THE RECORD OF THE COUNTY COMMISSIONERS of Stanly County is as follows:

"June Term, 1889.

"Ordered, that the following proposition presented by Mr. Tho. F. Kluttz of Salisbury, president of the Yadkin Railroad Company, be accepted. The president and board of directors of the Yadkin Railroad Company having applied to the board of commissioners of Stanly county to make a subscription of one hundred thousand dollars to the capital stock of the said railroad company, and said application having been considered by the board **and it appearing that the citizens of said county have an interest in said railroad,** it is hereby resolved and ordered by the board that the county of Stanly shall subscribe said amount of one hundred thousand dollars to the capital stock of said Yadkin Railroad Company, upon the following terms and conditions:

Said subscription shall be one hundred thousand dollars, payable in bonds of Stanly county, in denominations of five hundred and one thousand dollars each, bearing six per cent. interest per annum from the date of the delivery of said bonds to said company, the interest to be payable annually on the 1st day of July in each year; said bonds shall be deposited with the First National Bank of Salisbury, N. C., on the first day of October, 1899, or as soon thereafter as practicable, the bank to hold them and deliver the same to the said railroad company as hereinafter provided. Said bonds shall run for 30 years, with the privilege of paying the principal and interest of any or all of them at any time after the expiration of ten years, upon the board of commissioners of said county first giving three months' notice of such payment in a newspaper published in said county, when said bonds shall be paid according to number, beginning with No. 1, and as bonds are delivered capital stock of said company in like sum to be delivered to the county of Stanly.

An election is hereby ordered to be held at the usual voting places in Stanly county on Thursday, August 15, 1899, for the purpose of enabling the qualified voters of said county to vote for or against the said proposed subscription, those voting for said subscription shall vote a printed or written ticket with the word "Subscription," thereupon, and those voting against said subscription shall vote a printed or written ticket with the word: "No subscription"

thereupon, and said election shall be held in accordance with section 1998 of the Code of North Carolina, and due notice of said election shall be given in accordance with law.

If the proposition to vote said subscription shall be ratified by a majority of the qualified voters of said county at said election, then said bonds shall be delivered to said Yadkin Railroad *County*, as follows: Twenty-five thousand dollars when ten miles of said road is constructed and in operation from the Rowan County line into said county of Stanly; twenty-five thousand dollars more when said road is constructed and in operation from the town of Salisbury to the town of Albemarle, and the remaining fifty thousand dollars when said road is constructed and in operation from the town of Salisbury to the village of Norwood, in Stanly county; provided, Salisbury to the village of Norwood, in Stanly county; provided that the said railroad company shall be required to begin the construction of said road at Salisbury within ninety day from and after the first day of October, 1889, and to complete the same to Norwood within eighteen months thereafter, and if not so begun and completed, then said bonds shall not be delivered to said company; provided, however, that the board of commissioners of Stanly County shall have full power and discretion to extend the time for the performance of the conditions and limitations hereinbefore mentioned.

Said railroad shall be of the standard g*uage*.

It is hereby ordered that an entirely new registration of voters be made for said election as provided by law (see pages 19 and 20 of the Record).

The following is the copy of the bond:

"*County of Stanly Six Per Cent. Bond.*

"Stanly County, State of North Carolina, is indebted to the bearer in the sum of five hundred dollars payable, * * * &c., &c. This bond is one of a series of eighty of the denomination of one thousand dollars each and forty of the denomination of five hundred, making a total of one hundred thousand dollars, issued by authority of an act of the General Assembly of North Carolina, ratified the third

day of March, A. D. 1887, *entitled* An act to amend the charter of the Yadkin Railroad Company, *and of sections 1996, 1997, 1998 and 1999 of the Code of North Carolina*, and authorized by a majority of the qualified voters of Stanly county, at an election regularly held for that purpose on the 15th day of August, A. D. 1889, duly ordered by the Commissioners of Stanly County.

"This series of bonds is issued to pay the subscription of one hundred thousand dollars made by Stanly county to the capital stock of the said railroad known as 'The Yadkin Railroad Company,' * * * &c., &c.

"In testimony whereof the chairman of the Board of County Commissioners of Stanly County hath hereunto subscribed his name for and on behalf of said board and the clerk of the superior court of Stanly county hath countersigned the same and affixed thereto the seal of said superior court this fourth day of July A. D. 1890."

We present at this point in the argument Section 1996 of the Code, and the record of the Board of Commissioners, and the bond, to show that, at the time the election was ordered and held and the bond issued, the board was acting under the sections of the code and doing what its members thought was their duty.

We do not notice anywhere in the brief of the counsel for the county of Stanly any explanation of this record.

When we see the importance attached to this by Judges MORRIS and BOYD in their able, and we may say conclusive, arguments, this omission in the brief of the other side seems strange to us.

When the corporate authorities of Stanly County came to act, they had before them this section of the Code.

They saw that section of the Code had to be construed, and they had to make a record of their acts.

It certainly conferred a *power* upon the Board, because its language is: "The Board of Commissioners of the several counties *shall have power* to subscribe stock to *any railroad company or companies*, when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest."

The Board undertook to exercise this power conferred, and construed it to mean what it said it meant; that is, it gave *power* to subscribe to *any* railroad company, whether that company was in existence then or not.

Not only that, but it gave power to subscribe to the stock of such company, when necessary to aid in the completion of *any* railroad, in which the citizens of the county may, at any time, have an interest, no matter whether the railroad had been begun or not. It was any company—*any* railroad.

This was their construction of the section, and they *put it down on the record, and found, as a fact, that* "*the citizens of the county have an interest in said railroad*," using the language of the statute, *showing they had it before them, and were acting under it.*

Now, in the face of this record, and of the recital in the bond of this power, these sections and of a vote of a majority of the qualified voters of Stanly County, these same officers come and say they did not have the power, because the citizens of the county had no interest in the railroad, and it was not *what they said it was, for the completion of the same.*

What reason can be given for such conduct?

Why look into the books for meanings and definitions of words used in the statute, when the board, acting under the statute, have construed the same *and put that construction on record?*

This is a suit by an innocent bondholder, and it is useless to argue further as to what his rights are.

It is to be noted that the positions taken in other briefs filed in this case in the Circuit Court of Appeals, and in those filed by permission of the Supreme Court of the United States, when the *Wilkes case* was argued, are abandoned, or many of them are.

This case has been fully considered, fully argued, and we respectfully submit that the petition should be denied.

CHARLES PRICE,
Of Counsel for Respondents.